

City of Fitchburg, In the Year 2010  
AN ORDINANCE ESTABLISHING A PROCEDURE  
AND AUTHORIZING RULES AND REGULATIONS  
FOR OUTDOOR SEATING AND PLACING GOODS  
OR OTHER PROPERTY ON SIDEWALKS

Be it ordained by the City Council of the City of Fitchburg, as follows:

WHEREAS, the purpose of this Ordinance is to establish a procedure and authorize rules and regulations for the licensing of outdoor cafes and outdoor sales of goods in the Central Business District of the City of Fitchburg.

1. The meaning of words in this ordinance shall be as follows:

BUILDING COMMISSIONER means the Building Commissioner, building inspector or alternate Building Commissioner or their designee

GOODS means items or merchandise offered for sale in the regular course of business.

OUTDOOR CAFÉ means any restaurant where food or refreshments are served or consumed outside of the main building on either private property or on the public right-of-way, immediately in front of or adjacent to any restaurant, café, cafeteria other place of business.

OUTDOOR SALE means the sale of goods on either private property or on the public right-of-way, immediately in front of or adjacent to the place of business offering the goods for sale.

OUTDOOR TABLE means a table and chairs placed outside of any building for use by the public and/or employees of the person placing the table for eating food prepared at another location.

PERSON means any individual, partnership, association, firm, company, corporation, department, agency, group, or public body.

SIDEWALK - that area of the public right-of-way reserved for pedestrian traffic from the curb to the front line of the building.

1) LICENSE.

It is unlawful for any person to establish or operate an outdoor café or outdoor retail sale on the sidewalks of the City of Fitchburg unless such person shall hold a currently valid license issued pursuant to the terms of this article. Any commercial or retail establishment may, with a license from the building commissioner, place outdoor tables and chairs for the use its employees, or the public.

2. LOCATION.

(A) If and to the extent it is located within or on the sidewalk, an outdoor café or outdoor sale shall be limited to the area adjacent to the premises which operates it and may extend to the curb line in front of the premises. The person operating the outdoor café or sale must maintain an unobstructed paved surface for pedestrian traffic as determined by the Building Commissioner.

(B) When located on private property, outdoor cafes or sales must be adjacent to the premises to which the outdoor café or sale is accessory but may be located in front of, on the side of and/ or to the rear of the premises. Such cafes shall be required to maintain an unobstructed paved surface for pedestrian traffic as determined by the Building Commissioner.

1. APPLICATION FOR LICENSE.

Any person may apply to the Building Commissioner. The application, signed by the applicant, shall contain the following information:

(A) The name, residence address and telephone number of each person having an ownership interest in the operation of the activity including the names of the managers or officers of a limited liability company; if a corporation, the names, residence addresses and telephone numbers of the directors and officers owning a ten percent or greater interest in the corporation and the chief operating executive of the corporation; the name

of the person authorized to accept service of process within the Commonwealth of Massachusetts; a certificate of good standing from the Secretary of the .

(B) A copy of a doing business certificate if the applicant will operate the business under business or fictitious name .

(C) The address and description of the premises where the applicant intends to establish or operate an outdoor café or retail sales.

(D) The name and address of the person owning the premises, if other than the applicant, and the consent of the owner of the premises the operation of the outdoor cafe or sale.

(E) Three sets of a proposed layout plan containing scaled drawings clearly illustrating the number, type of materials, color and location of all tables, chairs, umbrellas or other furnishings or fixtures intended to be located in the outdoor café or outdoor sale. The plan must show the perimeter of the area to be used and the area of unobstructed space permitting free passage of pedestrian traffic around or through the outdoor café or sale. The perimeter shown on the plan may be set off by a portable-type enclosure, which may include line plantings. Awnings or outdoor umbrellas extending over the enclosure are permitted. The plan shall also show the following:

1. The location of any doors leading from the main building to the outdoor café or sale.
2. The place where any food or drink will be prepared.
3. The location of all fire hydrants, parking meters, utility poles, benches, handicap ramps, street furniture, trees and any other fixtures permanently located on the sidewalk in front of the eating establishment or within 10 feet thereof on either or any side.
4. The type and location of any proposed outdoor lighting and fixtures.
5. Name, address, block and lot of all uses within 200 feet to either side of the property, including types of uses, and, in the case of mixed use, the location of use by level within a building.
6. Seating capacity of the existing restaurant and the proposed outdoor seating capacity.

## 5. REVIEW OF APPLICATION.

The Building Commissioner will review the application for completeness, compliance with this ordinance and compliance with other applicable laws and regulations including those enforced by the Fitchburg Board of Health. If the application is complete, the Building Commissioner will act upon the same within 10 business days of the submittal of the application. If the application is incomplete, the Building Commissioner will notify the and inform the applicant how the application is incomplete.

## 6. ISSUANCE OF LICENSE

If the application complies with the article, the Building Commissioner shall issue a license subject to the terms and conditions of this ordinance. The Building Commissioner may impose reasonable terms and conditions on the license and may promulgate regulations relating to licenses granted under the ordinance. The regulations shall be filed with the City Clerk.

## 7. TRANSFER OF LICENSE.

The license is personal to the applicant, and any change or transfer of ownership of the outdoor café shall terminate the license and shall require new application and a new license meeting the requirements of this ordinance.

## 8. INSPECTIONS.

Acceptance of the license by the applicant shall operate as a consent to inspection of the premises by the health, fire, police and building officials of the city to for the purpose of determining compliance with the terms and conditions of this ordinance and other applicable federal, state, or local laws or regulations.

## 9. INDEMNIFICATION OF CITY

The Building Commissioner may not grant a license to any person to operate an outdoor café or outdoor sale until and unless such person files with the Building Commissioner or his designee a written indemnification and hold harmless agreement indemnifying the

City of Fitchburg, its officers, agents, servants and employees from any or all claims, damages, judgment costs or expenses, including attorneys fees, which they or any of them may incur or be required to pay because of any personal injury, including death, or property damage suffered by any person or persons as a result of or related in any way to the operation and maintenance of the outdoor café or outdoor retail sales for which the license is issued.

#### 10. LIABILITY INSURANCE REQUIREMENT.

A. The Building Commissioner may not grant a license to any person to operate an outdoor café or outdoor sale until and unless such person files with the Building Commissioner or his designee a copy of a comprehensive general liability policy issued to such person by a public liability insurance company authorized to do business in the Commonwealth of Massachusetts affording the coverage's set forth below in the amount so specified. Such insurance policy shall name the City of Fitchburg, 718 Main Street, Fitchburg, MA, 01420 its agents, officers, servants, and employees as additional insured with respect to the operation and maintenance of the outdoor café in the following amounts:

- (1) Bodily injury. Each person/each accident: \$1,000,000
- (2) Properly damage. With the annual aggregate: \$3,000,000

B. The insurance coverage required by this section shall at all times be maintained for the full amount. The policy of insurance required by this section to be filed with the Building Commissioner or his designee shall contain a clause obligating the company issuing the same to give not less than 30 days' written notice to the City Clerk before failing to renew or canceling the policy or amending any of the terms thereof. The cancellation, termination or non-renewal of any such policy shall have the immediate effect of suspending the license of such person to operate the outdoor café covered thereby until a new policy complying with the provisions of this section is filed with the Building Commissioner or his designee.

#### 10. REVOCATION OR SUSPENSION OF LICENSE.

Any license issued hereunder may be revoked or suspended by the Building Commissioner for non-compliance with this ordinance or any term or condition of the license or for violation of any other applicable federal, state, or municipal law or regulation. Any license issued hereunder is issued upon the express understanding that the licensee obtains no property right or interest in the continuation of said license.

#### 11. OPERATION WITHOUT LICENSE UNLAWFUL.

It is unlawful for any person to operate an outdoor café or sale after the suspension or termination of the license.

#### 12. PROPERTY MAINTENANCE.

Each licensee is responsible for keeping the area of the outdoor café or outdoor sale and the adjacent walks and streets free and clear of any debris or litter resulting from the operation of the café or sale. The area must be cleaned as needed and at the beginning and end of each business day.

#### 13. VENDING MACHINES PROHIBITED.

No vending machines of any kind are permitted on the exterior of any building operating an outdoor café.

#### 16. SIGNS.

The Building Commissioner or his designee, notwithstanding city code 132-2, 149-2&6, 157-31, 40, 42, 43, 44, may authorize signs and displays for outdoor sales and cafes. Outdoor umbrellas located in an outdoor café are exempt from the Sign Ordinance of the City of Fitchburg.

#### 17. ADDITIONAL RIGHTS OF CITY.

In addition to the powers of suspension or revocation as set forth above, the City reserves the right to modify, suspend or revoke any license on 10 days' written notice if the City determines that pedestrian traffic is made unsafe because of the operation of the outdoor café/ sale. The license may also be suspended or revoked on 10 days' written notice in the event that the City determines that it is necessary to utilize the area or any part thereof for the maintenance or installation of underground utilities. In the event of an

emergency, which emergency is certified by the Building Commissioner, the license may be suspended or revoked without notice.

#### 18.ALCOHOLIC BEVERAGE CONTROL LICENSE.

If the applicant is the holder of an alcoholic beverage control license pursuant to the laws of the Commonwealth of Massachusetts, it shall be the applicant's responsibility to cause the alcohol beverage control license to be amended to include the premise utilized for outdoor café purposes in order to serve alcoholic beverages therein.

#### 19.EQUIPMENT.

No tables, chairs, benches or other equipment used in the outdoor café or outdoor sale shall be attached, chained or in any manner affixed to any tree, post, sign, curb or sidewalk or property of the City of Fitchburg.

#### 20.VACATION OF SIDEWALK SPACE; REMOVAL OF PROPERTY BY CITY.

The license agrees at the end of the license period, or in the event that the license is temporarily or permanently suspended or revoked, that the licensee will at his own cost and expense vacate the sidewalk space and promptly remove any property placed thereon. Failure to do so on five days' written notice shall grant to the City the right to remove any property on the sidewalk, and the licensee agrees to reimburse the City for the cost of removing and storing the same.

#### 21. NOISE.

The licensee shall not direct or permit to be directed to or from the area occupied by the outdoor café or retail sales any loudspeaker, public address system, sound amplifier or similar device.

#### 22.HOURS OF OPERATION.

No outdoor café shall be open for business remain open for business after 2:00AM. All persons occupying the outdoor café shall vacate the same no later than 2:00 A.M.

#### 23. TABLE SERVICE.

No food or drinks served or consumed at outdoor cafes located either on public or private property shall be prepared or stored other than in the interior of the restaurant.

#### 24. LICENSE TERMS AND CONDITIONS.

- A. A license or outdoor issued under the ordinance is valid only through October 31 of any given year. A new license must be obtained for each year;
- B. A license or outdoor issued under the ordinance may not be transferred
- C. The license shall be displayed in a conspicuous place on the premises.

#### 25. REGULATIONS.

The conduct of outdoor dining pursuant to a license issued under this section shall be subject to and inclusive of all of the following restrictions and requirements.

- A. Outdoor cafes may only be opened in districts zoned for business, designated on the City of Fitchburg Zoning Map;
- B. The outdoor dining area must be limited through the use of a moveable simple barrier as approved by the Building Commissioner;
- C. The outdoor dining area or sale must not block, obstruct and/or unreasonably interfere with pedestrian traffic on public sidewalks
- D. Any outdoor dining area shall have adequate buffering from adjacent buildings or sites consisting of landscaping and/ or fencing or as approved by Building Commissioner.
- E. Property owners shall not place anything in an alleyway, path, or walkway or set up tables in such a manner as to block, obstruct, or inhibit access to such alleyways, paths, or walkways;
- G. Only tables, chairs, umbrellas, and receptacles for garbage and recyclables are permitted within the outdoor dining area;
- H. Outdoor dining facility or retail sales owners, employers, and employees shall not place any table, chair, sign, umbrella or other item in such a manner as to block or obstruct any municipal sign, receptacles for garbage and recyclables, fire hydrants, or other public amenity;

- I. Outdoor dining facility owners, employers, and employees must provide for the disposal of garbage and recyclables. Public receptacles for garbage shall not be used;
- J. The outdoor dining area or retail sales and surrounding sidewalk and property areas shall be kept clean from any and all litter during hours of operation;
- K. All customers must be seated in the outdoor dining area during their patronage. Outdoor dining facility owners, employers, and employees are prohibited from serving drivers or passengers in vehicles;
- L. All food preparation shall be indoors in the regular kitchen area of the retail food establishment;
- N. All outdoor food service is subject to the regulations contained in the Massachusetts State Sanitary Code;
- P. Outdoor dining facility owners, employers and employees are prohibited from using public utility hookups;
- Q. All noise emanating from the outdoor dining area shall be kept at such a level as to comply in all respects with the provisions of applicable ordinances;
- X. The City of Fitchburg retains the right to temporarily suspend an outdoor facility license to allow for construction activity, utility repairs, special events, or any other appropriate reason as determined by the Building Commissioner. Reasonable advance notice must be given to the affected outdoor dining facility licensees;
- Z. All tables, chairs and other materials must be kept within the areas permitted by the outdoor dining license or retail sales, and the sidewalk must be washed and/ or swept daily.

#### 28. SEVERABILITY.

All provisions of this Ordinance are severable. If for any reason, any provision of this Ordinance is held to be invalid, the validity of the remainder of the Ordinance shall not be affected.

#### 29. EFFECTIVE DATE.

This Ordinance shall become effective upon adoption, final approval and publication, pursuant to law.